

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	File Number: EB-07-HU-007
Donald Winton	)	
	)	NAL/Acct. No.: 200732540003
Licensee of Citizen Band Radio Station	)	
Corpus Christi, Texas	)	FRN: 0016201386
	)	
	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted:** September 14, 2007

**Released:** September 18, 2007

By the Associate Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Memorandum Opinion and Order ("Order"), we deny in part and grant in part the petition for reconsideration filed by Donald Winton of the *Forfeiture Order* issued July 12, 2007.<sup>1</sup> The *Forfeiture Order* imposed a monetary forfeiture in the amount of \$7,000 for Mr. Winton's willful violation of Section 95.426(a) of the Commission's Rules.<sup>2</sup> The noted violation involved Mr. Winton's failure to make his CB radio station available for inspection.

**II. BACKGROUND**

2. On February 21, 2007, in response to a complaint that a CB radio station in Corpus Christi, Texas was jamming communications on CB channel 19 by continually re-broadcasting the programming of a local AM broadcast station, an agent from the Commission's Houston Office of the Enforcement Bureau ("Houston Office") monitored communications on CB channel 19 in the Corpus Christi area. The agent observed a radio signal on CB channel 19 re-broadcasting the programming of a local AM broadcast station; and using radio direction finding techniques determined that the signal originated from an antenna mounted on a house in Corpus Christi, Texas.

3. Still on February 21, 2007, while the agent was making measurements on the radio signal from the CB radio station, Donald Winton exited the house and walked down the driveway. The agent introduced himself as an FCC agent, and requested to inspect the CB radio station inside the house. Mr. Winton confirmed this location was his residence and that the CB station belonged to him, but refused to make the station available for inspection. The agent advised Mr. Winton that the Commission's Rules require the operator of a CB radio station to make the station available for inspection. Mr. Winton still refused to make the station available for inspection. The agent then requested that Mr. Winton go inside and take the station off the air because it was blocking communications on CB radio channel 19. Mr. Winton

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<sup>1</sup> *Donald Winton*, Forfeiture Order, DA 07-3098 (Enf. Bur. South Central Region July 12, 2007) ("*Forfeiture Order*").

<sup>2</sup> 47 C.F.R. § 95.426(a).

walked into the house and the station's transmissions ceased. Mr. Winton returned and continued to refuse to make the station available for inspection, so the agent left the area.

4. On April 23, 2007, the Houston Office issued a *Notice of Apparent Liability for Forfeiture* to Mr. Winton in the amount of seven thousand dollars (\$7,000), for the apparent willful violation of Section 95.426(a) of the Rules.<sup>3</sup> Mr. Winton submitted a response to the *NAL* requesting a reduction or cancellation of the proposed forfeiture. On July 12, 2007, the Enforcement Bureau ("Bureau") released the *Forfeiture Order*. The Bureau received Mr. Winton's petition for reconsideration on July 30, 2007, requesting reduction or cancellation of the forfeiture.

### III. DISCUSSION

5. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>4</sup> Section 1.80 of the Rules,<sup>5</sup> and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.<sup>6</sup> In examining Mr. Winton's petition, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and any other such matters as justice may require.<sup>7</sup>

6. Mr. Winton states that he did not let the agent into his house, because of the danger posed by his dogs, and that he mentioned the dogs to the agent. He also claims that the agent acknowledged the dogs and said that "maybe the dogs won't bite." Mr. Winton further writes that the agent has "a vendetta out to get me cause I wouldn't let you in my house and told you get off my property!" We find that Mr. Winton has raised no arguments that would warrant reduction or cancellation of the forfeiture. Mr. Winton admits that he refused to allow the agent inside his home to inspect his CB station. As stated in the *Forfeiture Order*, if Mr. Winton was concerned about the agent's safety, he should have confined his dogs to a separate room, prior to allowing the agent to inspect his CB station, rather than refusing the inspection.

7. Mr. Winton also asserts that he provided sufficient information regarding his finances to warrant a reduction in forfeiture. In response to the *NAL*, Mr. Winton provided copies of 1099 Social Security Forms from 2004 and 2005, a new Social Security benefit amount form for 2006 and a 2006 Notice of Eligibility of Benefits from the Texas Health & Human Services Commission. Mr. Winton was asked to provide additional information to demonstrate his inability to pay the forfeiture, namely federal tax returns for 2004, 2005, and 2006, or, if he did not file tax returns, a statement under penalty of perjury listing all of his sources of income for 2004, 2005, and 2006. Mr. Winton did not provide this information, so the Bureau was unable to determine in the *Forfeiture Order* whether a reduction was warranted. Subsequent to filing his petition for reconsideration, Mr. Winton provided additional documentation regarding his sources of income. After examining the financial documentation submitted by Mr. Winton, we conclude that a reduction of the forfeiture to \$225 is warranted based on his demonstrated inability to pay.

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<sup>3</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732540003 (Enf. Bur., Houston Office, April 23, 2007) ("*NAL*").

<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 C.F.R. § 1.80.

<sup>6</sup> 12 FCC Rcd. 17087 (1997), *recon. denied*, 15 FCC Rcd. 303 (1999).

<sup>7</sup> 47 U.S.C. § 503(b)(2)(D).

#### IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Communications Act of 1934, as amended,<sup>8</sup> and Section 1.106 of the Commission's Rules,<sup>9</sup> Donald Winton's petition for reconsideration of the July 12, 2007 *Forfeiture Order* **IS** hereby **DENIED IN PART** and **GRANTED IN PART**.

9. **IT IS ALSO ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>10</sup> Donald Winton **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of two hundred and twenty-five dollars (\$225) for violation of Section 95.426(a) of the Rules.

10. Payment of the \$225 forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>11</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the "Federal Communications Commission." The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.<sup>12</sup>

11. **IT IS FURTHER ORDERED** that this Order shall be sent by regular mail and by certified mail, return receipt requested, to Donald Winton at his address of record.

#### FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon  
Associate Chief, Enforcement Bureau

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<sup>8</sup> 47 U.S.C. § 405.

<sup>9</sup> 47 C.F.R. § 1.106.

<sup>10</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 95.426(a).

<sup>11</sup> 47 U.S.C. § 504(a).

<sup>12</sup> See 47 C.F.R. § 1.1914.